

STATE OF MICHIGAN
COURT OF APPEALS

STEPHEN ELFELT,

Plaintiff-Appellant,

v

DALE M. MUNK,

Defendant-Appellee.

UNPUBLISHED

May 2, 2006

No. 257875

Manistee Probate Court

LC No. 04-000059-DE

Before: Murphy, P.J., and White and Meter, JJ.

PER CURIAM.

Plaintiff appeals by delayed leave granted an order denying his petition to be appointed personal representative of the estate of Alice Gordon, deceased. Neither party to this appeal is an heir of Alice Gordon. We affirm.

The parties were previously involved in litigation concerning the ownership of a 10-acre parcel of property located in Manistee County that belonged to Alice Gordon and for which defendant obtained a tax deed in 1997 for unpaid 1993 property taxes. *Elfelt v Munk*, unpublished opinion per curiam of the Court of Appeals, issued October 7, 2003 (Docket No. 239663) (*Elfelt I*).¹ Plaintiff also obtained tax deeds relative to unpaid taxes for the years 1994 and 1995 as well as quitclaim deeds from Alice Gordon's purported heirs.

After this Court remanded *Elfelt I*, plaintiff filed the instant petition to probate Alice Gordon's estate. Defendant objected to plaintiff's application to be the personal representative, claiming that plaintiff was not a creditor of the estate and that plaintiff's interests were adverse to those of the estate. The probate court denied plaintiff's petition, ruling that because Alice Gordon's estate presumably passed to her husband, Robert Gordon, Sr., whose estate was probated in California, the probate court was without jurisdiction to determine either who held title to the parcel or who Alice Gordon's heirs were. Thus, the probate court ruled that the proper way to determine ownership of the parcel would be to reopen the probate of Robert

¹ The present appeal is a separate matter from *Elfelt I*, which involved an action to quiet title in the parcel.

Gordon, Sr.’s estate in California. Plaintiff argues that the trial court erred in ruling that it lacked jurisdiction over the estate.

Issues of statutory interpretation and whether a probate court has jurisdiction are both questions of law, which we review de novo. *In re Haque*, 237 Mich App 295, 299; 602 NW2d 622 (1999).

Plaintiff is not entitled to be appointed personal representative of the estate. A personal representative is a fiduciary of the estate, MCL 700.1104(e), and as such stands in a position of trust and confidence with respect to heirs, devisees, and beneficiaries, owing duties of undivided loyalty and impartiality, along with the duty of care and prudence in actions, MCL 700.1212. See *McTaggart v Lindsey*, 202 Mich App 612, 617; 509 NW2d 881 (1993) (personal representative is fiduciary of estate, standing in a position of trust and confidence, who is charged with settling and distributing estate while using his authority in the best interests of the estate and parties). Here, plaintiff purchased the purported heirs’ alleged interests in the parcel by quitclaim deeds for \$600, and plaintiff is obviously seeking through a probate proceeding a determination that he is the owner of the parcel.² Plaintiff acknowledges as much in his appellate brief, claiming that he “is also an interested person in Alice Gordon’s estate because he holds a quitclaim deed from her ‘heirs.’” Thus, if plaintiff were to be declared the personal representative, his claim against the estate that he owns the parcel could potentially conflict with the interests of the estate. Plaintiff’s claim to the parcel under the probate proceedings rests on an assumption that the purported heirs inherited the property and thus had some interest to convey to plaintiff. Although the validity of the quitclaim transfer is not before this Court, a fiduciary should at least consider whether or not such a transfer might be avoided if he or she were truly acting in the estate’s best interest. Plaintiff, however, would undoubtedly have a personal interest in ignoring any potential grounds to avoid the conveyance.

Moreover, plaintiff was not nominated as the personal representative in any will, he is not a surviving spouse, he is not a devisee, he is not an heir, he is not the nominee of a creditor,³ and he is not a state or public administrator; therefore, he is not included in the priority list of potential personal representatives under MCL 700.3203(1). Although plaintiff attached a probate court form apparently signed by an heir, Douglas Gordon, which nominated and requested the appointment of plaintiff as personal representative, MCL 700.3203(3) requires

² Contrary to plaintiff’s assertion, we did not hold in *Elfelt I* that defendant had no interest in the parcel but only that “defendant has not obtained a *vested* interest in the property.” *Elfelt I, supra*, slip op at 5 (emphasis added).

³ Under the circumstances of this case, we do not view plaintiff as a creditor’s nominee or a “creditor” of the estate for purposes of MCL 700.3203(1)(f); however, even if deemed a creditor or creditor’s nominee, § 3203(1)(f) requires a finding that the creditor’s nominee be “suitable” as a personal representative, and considering the ongoing battle with defendant over the ownership of the parcel and the inherent conflict of interest with the estate, plaintiff is not suitable.

such a nomination by one who is entitled to letters to be concurred in by others sharing the same priority if they have not renounced their right to nominate or right to an appointment. The record contains no documentation from the two other purported heirs, Bruce Gordon and Robert Gordon, Jr., who appear to have the same priority as Douglas. Therefore, MCL 700.3203(3) does not provide plaintiff with a basis for appointment and, additionally, § 3203(3) requires the nominated person to be qualified, and we have already found that plaintiff is not qualified to act as a fiduciary with regard to this estate. Accordingly, we affirm the court's denial of plaintiff's petition to be appointed personal representative.

On the possibility that an appropriate individual seeks to open the estate and requests appointment as personal representative, we give the court the following guidance for purposes of judicial expediency. The court does have jurisdiction to open a probate estate for Alice Gordon with respect to the Manistee property. The Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq.*,⁴ applies to "[a] nonresident's property that is located in this state[.]" MCL 700.1301(b). Further, MCL 700.1302 provides:

The court has exclusive legal and equitable jurisdiction of all of the following:

(a) A matter that relates to the settlement of a deceased individual's estate, whether testate or intestate, who was at the time of death domiciled in the county *or was at the time of death domiciled out of state leaving an estate within the county to be administered*, including, but not limited to, all of the following proceedings:

- (i) The internal affairs of the estate.
- (ii) Estate administration, settlement, and distribution.
- (iii) Declaration of rights that involve an estate, devisee, heir, or fiduciary.
- (iv) Construction of a will.
- (v) Determination of heirs. . . . [Emphasis added.]

Additionally, and contrary to the court's conclusion that it could not determine an interest in land, MCL 700.1303 provides in relevant part:

(1) In addition to the jurisdiction conferred by section 1302 and other laws, the court has concurrent legal and equitable jurisdiction to do all of the following in regard to an estate of a decedent . . . :

⁴ We find that EPIC, as opposed to the former Revised Probate Code, is applicable to this action pursuant to MCL 700.8101(2)(b).

(a) Determine a property right or interest.⁵

As noted by this Court in *Elfelt I, supra*, slip op at 2, the record “does not reflect whether [Alice] Gordon’s estate was probated or whether the heirs ever were conveyed an interest in the property and, if so, by what means.” The California probate documents regarding the estate of Robert Gordon, Sr., which were submitted by plaintiff, indicate that the estate’s real property consisted of residential property in California; there is no mention of the Manistee property. However, the California judgment of final distribution provides that “[a]ny other property of the decedent or of the estate not now known or discovered that may belong to the estate or in which decedent or the estate may have an interest shall be distributed, in equal shares, to Douglas J. Gordon, Bruce A. Gordon, and Robert I. Gordon.” That being said, there does not appear to be any recorded document evidencing a transfer of the Manistee property from Robert Sr.’s estate to his heirs or anyone else. If the Manistee property passed in its entirety to Robert Sr. on Alice Gordon’s death and remained with Robert Sr., the property passed to the children on Robert Sr.’s death pursuant to the California judgment. However, we simply do not know with certainty the ownership status of the property at and after the time of Alice’s and Robert Sr.’s deaths. We see no reason why the probate court here could not exercise jurisdiction under EPIC, considering the unknowns in this case. Certainly, if the court is ever called upon by a proper personal representative to pursue this matter, it could exercise its jurisdiction, and, if the court were to find that the Manistee property passed in full to Robert Sr. on Alice’s death and was thus necessarily included in the California probate of Robert Sr.’s estate and passed to the three children, the court would need to recognize the California judgment and give it effect by entering an order consistent with that judgment.⁶ If such were not the case, the probate court could render whatever ruling the facts and law necessitate.

Affirmed.

/s/ William B. Murphy
/s/ Patrick M. Meter

I concur in the result only.

/s/ Helene N. White

⁵ Furthermore, MCL 700.3201(1)(b) provides that venue is proper in a county where property of the decedent was located at the time of death if the decedent was not domiciled in Michigan.

⁶ We direct attention to the Full Faith and Credit Clause of the United States Constitution, US Const, art IV, § 1, and Michigan’s Uniform Enforcement of Foreign Judgments Act, MCL 691.1171 *et seq.* See also *Blackburne & Brown Mortgage Co v Ziomek*, 264 Mich App 615, 620-621; 692 NW2d 388 (2004).